

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5369 OF 2003

Times India Corporation).. Petitioner

Versus

Indian Express Newspapers (Bombay) Ltd.).. Respondent

Mr.H.J. Thakkar i/b.Ms.Merlyn Monteiro for the
Petitioner.

Ms.Ranjana Parikh for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 29TH AUGUST 2005

P.C.:

. This Petition has been filed challenging the order dated 6th August 2003 whereby the trial Court has framed an additional issue. However, it has refused to try the same as a preliminary issue. The issue is in respect of jurisdiction of the Small Causes Court to entertain the Suit under Section 28 of the Bombay Rents, Hotel Lodging and Rates (Control) Act, 1947.

2. The grievance of the Petitioner is that the issue of jurisdiction goes to the root of the matter and must be tried as a preliminary issue. According to the Petitioner, the Small Causes Court has no jurisdiction to entertain and try the Suit filed by the Respondent.

The suit premises are situate in a building owned by Life Insurance Corporation of India. Therefore, any dispute relating to the suit premises would be governed by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Respondent is the tenant of the premises and the licensor of the Petitioner.

3. The submission made on behalf of the Respondent by the learned Advocate is that the Appeal Court which is seized of the matter has showed utmost leniency to the Petitioner. The Appeal is of the year 1996. An additional issue has been framed in the year 2003. The Appeal is part heard since arguments in respect of all issues except the issue regarding permanent alterations have been heard. Arguments relating to jurisdiction have also been canvassed. In such circumstances, she submits that this being a discretionary order passed by the Appellate Court, no interference is called for. She relies on the judgment of the learned Single Judge of this Court in *Usha Sales Ltd. vs. Malcolm Gomes and others*, **AIR 1984 BOMBAY 60**, to submit that it is not obligatory on the part of the Court to decide an issue as a preliminary issue. The learned Single Judge of this Court has observed thus :

"11. From the above it is easily seen that there is an obligation cast upon the Court that even though a case may be disposed of on a preliminary issue the Courts shall subject

to the provision of sub-rule (2) pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.

12. There is, however, a small exception carved out to the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in sub-r. (2) of R. 2 of O. 14 of the Code. The words "it may try" are clearly indicative of the fact that discretion is given to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue." 11, 12

3. An issue relating to jurisdiction would normally be tried as a preliminary issue. However, in my view, there is no need to interfere with the order of the Appellate Court especially in view of the fact that arguments have been partly heard and are in fact nearing completion. The Writ Petition is of the year 2003. It has been dismissed for default in 2003 itself and was restored in February 2004. The Petition has been moved for admission in 2005. All these factors leads one to the conclusion that the Petitioner is not really serious in having the issue of jurisdiction being tried as a preliminary issue. Hence, Writ Petition rejected.